Court of King's Bench of Alberta

Citation: Compeer Financial PCA v Sunterra Farms Ltd, 2026 ABKB 57

Date: 20260127
Docket: 2501 19283/
2501 06120
Registry: Calgary

Between:

2501 19283

Compeer Financial PCA

Plaintiff/Respondent

- and -

Sunterra Farms Ltd., Sunwold Farms Limited, Sunterra Enterprises Inc., Ray Price, Debbie Uffelman, Craig Thompson, David Price, Arthur Price and Glen Price

Defendants/Applicants

- and –

Between:

2501 06120

In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as Amended

And in the Matter of a Plan of Compromise or Arrangement of Sunterra Food Corporation, Trochu Meat Processors Ltd., Sunterra Quality Food Markets Inc., Sunterra Farms Ltd., Sunwold Farms Limited, Sunterra Beef Ltd., Lariagra Farms Ltd., Sunterra Farm Enterprises Ltd. and Sunterra Enterprises Inc.

Sunterra Food Corporation, Trochu Meat Processors Ltd., Sunterra Quality Food Markets Inc., Sunterra Farms Ltd., Sunwold Farms Limited, Sunterra Beef Ltd., Lariagra Farms Ltd., Sunterra Farms Enterprises Ltd., and Sunterra Enterprises Inc.

Applicants

Reasons for Judgment
of the
Honourable Justice Michael J. Lema

> *A picture is worth a thousand words: think of the game of musical chairs, where there are not enough chairs for the number of players when the music stops. Here, [Compeer Financial, PCA] was the ultimate loser because it had been the … contributor to the amount credited to [Sunterra's U.S. accounts] … on [February 12, 2025], the day the music stopped. – from* ***Location Bristar Idealease Inc (Syndic de)****,* 2012 QCCS 211 (Lalonde J describing cheque kiting) (para 11) (particulars adjusted for this case)

I. Introduction

[1] What are the quantum and character of the claims of Sunterra's primary Canadian and U.S. lenders in this *CCAA* proceeding?

[2] Per both lenders, Sunterra engaged in cheque kiting, on an astonishing scale, until it was discovered in early February 2025. Shortly afterwards, both lenders stopped payments on cheques being issued back and forth between various Canadian and American Sunterra entities.

[3] The net outcome, after the lenders applied all available credits, was that the American lender experienced a net loss of approximately $35 million USD, entirely attributable (in its view) to the kiting scheme. On this side of the border, the Canadian lender ended up with no direct losses related to the alleged cheque kitting.

[4] Per Sunterra, both lenders were aware of and approved its longstanding practice of issuing cheques, at high volume, back and forth between various of its Canadian and American entities, aimed at ensuring, on an ongoing basis, that no overdrafts were experienced on either side of the border.

[5] In this judgment I focus on the claim of the U.S. lender – Compeer Financial, PCA.

[6] I find that cheque kiting occurred here, that the Canadian Sunterra entities involved fraudulently misrepresented that south-going cheques were anchored by sufficient funds to be honoured, that those entities intended Compeer to rely on those misrepresentations, that Compeer so relied, and in doing so suffered losses of approximately $35 million USD, for which a summary judgment in favour of Compeer is appropriate. And that that now-accepted claim in these *CCAA* proceedings cannot be compromised without Compeer's agreement, per s. 19 *CCAA*.

[7] I also find Mr. Ray Price, president and a director of those entities, personally liable, with those entities, for those losses. And that Compeer is entitled to a summary judgment against another Sunterra entity which guaranteed payment of some of those losses.

[8] All as explained below.

II. Sunterra-Compeer dispute

A. Sunterra's core position

[9] Here is Sunterra's core position on its chequing relationship with Compeer Financial, PCA, its U.S. lender:

> Compeer made a **voluntary decision to advance conditional credit** to Sunterra. According to Mr. Wagner, Compeer's CEO, the decision to do so was voluntary. The decision to advance conditional credit was [also] **unilateral** – no specific formal contract was entered into between the parties with respect to the conditional credit.
>
> Conditional credit, by its nature, is **temporary**. The credit extends during **the time period between when a deposit is "transferred" to the time when the cash actually clears**. This is typically 3 days. Therefore, at any one time, the exposure for the granting of conditional credit is not more than approximately 3 days. **The aggregate amount of credit over time does not matter for the purpose of calculating credit risk**. The only relevance of the aggregate amount is that it gives the bank, in this case Compeer, information with respect to how its customer, in this case Sunterra, has been using the conditional credit over time. In other words, the aggregate amounts are proof that Compeer knew the extent to which Sunterra was using the conditional credit historically over time but is not evidence of any actual loss or exposure as that **exposure at any one time would always be limited to the 3-day clearing period.**
>
> There is **no evidence that Compeer imposed any use restrictions on the conditional credit** that they extended. In other words, **Sunterra was permitted to use the conditional credit allotted prior to the cash actually transferring.**
>
> In the event that conditional credit was ever withdrawn, Sunterra's belief was that Compeer had an ongoing duty of commercial reasonableness such that Sunterra would be able to repay any conditional credit outstanding. [Sunterra's Compeer brief, paras 7-10] [emphasis added]

B. Core finding on Sunterra's position

[10] That is all true as far as it goes.

[11] But it does not take Sunterra very far.

[12] Compeer undoubtedly extended conditional credit to Sunterra as described. But the granting of such credit, focusing on a given cheque, was premised on the cheque being honoured by the issuing bank.

[13] Sunterra points to its self-described "account management practice", whereby it sent cheques back and forth across the border daily, ostensibly covering account shortfalls from time to time. It says that Compeer was aware of and approved this practice.

[14] Compeer *was* aware of or at least had access to information about the volume of the back-and-forth cheques, their internal (i.e. within Sunterra) focus, and the amounts flowing each way.

[15] However, no evidence shows that Compeer was aware, until some point in February 2025, that the cheques sent south in the period under examination here – i.e. shortly before both Compeer and National Bank of Canada (Sunterra's primary Canadian lender) stopped payment on north-going and south-going cheques – were not anchored by sufficient funds i.e. that Compeer knew that the cheques which it had accepted and allowed Sunterra US to withdraw or otherwise use were not backstopped by actual cash in the NBC accounts on which they were drawn.

[16] Granting conditional credit on the expectation that the cheque in question will be honoured is one thing. I find that that is the basis on which Compeer allowed such credit.

[17] Granting conditional credit knowing or being indifferent about whether the cheque is NSF is another thing. I find that Compeer did not have such knowledge or show such indifference.

[18] As explained below.

C. "Account coverage practice"

[19] Sunterra says that this practice was used (in part) for operational purposes:

> … There has always been a **substantial amount of activity across the border between the Canadian companies and the US companies**, such as, for example, isoweans [certain piglets] and feeder hogs management support and swine expertise from Canada to the US and otherwise between the companies in the Sunterra Group.
>
> The Sunterra Group involves a complex array of commercial arrangements and transactions between the interrelated companies in the Group. These arrangements give rise to the **constant flow of revenue between entities**. From a bird's eye view, these would include:
>
> a) the flow of funds in **payment for the flow of piglets** between the two breeding entities in Canada, Sunwold Canada and Sunterra Canada, and the two "wean to finish" entities in the US, Sunwold US and Lariagra US;
>
> b) the flow of funds between those entities and the two pig management entities, Sunterra Canada and Sunterra US for all aspect[s] of pig management, including, for example, **rent, feed, medications, plant and equipment, employees, third party suppliers of goods and services of various kinds**, and between the pig management entities themselves; and
>
> c) **accounting, insurance and other business requirements** have often been managed across and between Group members, also requiring the flow of funds between them.

[20] Sunterra did not show that the south-going cheques on which NBC stopped payment had anything to do with payments for any of these identified purposes (as discussed further below).

[21] Sunterra further submitted:

> … as a part of the Account Coverage practice, Ray Price [Sunterra CEO] explained that Sunterra [has] worked to **manage the cash flow needs** between the Canadian Hog Farm entities and the US Hog Farm Entities **arising from the differences between cash accounting used in respect of taxation of the Canadian Hog farm entities, and accrual accounting which is required to be used in the US for the US Hog Farm Entities**. This is done by deferring payment for piglets supplied by the Canadian farm companies to the US farm companies for up to two years. This in turn necessitates a flow of funds between the companies in the US and Canada to help ensure adequate cash flow for the Canadian Hog Farm entities.

[22] As above, Sunterra did not show that the stopped-payment cheques in question had any connection with managing cash flow needs arising from such accounting differences.

[23] Sunterra continued:

> Sunterra, therefore, like many entities at [i.e. customers of] Compeer, relied primarily on the use of cheques in order to facilitate the above-explained flow of funds between the entities. Contrary to the written submissions of Compeer, this is not unusual for companies operating within the farming space, as illustrated by the fact that Compeer had established processes in place, which it deemed to be "practically necessary" as banking practices, in order to remain competitive within the marketplace.

[24] That benign explanation does not fit the end-stage circumstances here, with NSF cheques flying back and forth albeit not backstopped by actual cash i.e. with no actual funds being moved.

[25] Sunterra summed up on the topic of "conditional credit":

> Because Sunterra, like many Compeer customers, used cheques as a primary method of fund transfer, as part of the relationship with Compeer, Sunterra was extended credit for cheques prior to the clearing of such cheques. This "conditional credit" … is also referred to as "float." This is not, as Compeer attempts to imply, a "state" which occurs accidentally, over which Compeer has no choice or control. It is a deliberate choice by Compeer to add additional funds to an account before such funds have been actually transferred, which Compeer maintained in order to remain competitive within the agricultural space and is not unusual or atypical. However, it is not, as Compeer implies, automatic. It is a practice which Compeer makes the decision to participate in and use for its customers, including the intentional increasing of limits for the holds on those cheques.

[26] Here Sunterra reproduced a segment of the cross-examination of Jase Wagner, Compeer's CEO:

> Q: [I]s Compeer obligated to provide float?
>
> A: Practically speaking, yes.
>
> Q: What do you mean "practically speaking"?

A: The structure of the financial system, the competitive nature of lending requires the ability to use cheques in today's environment, and if you're going to accept cheques, then the structure in the financial system would create a scenario where float is possible or likely.

Q: … You'd agree with me that there's nothing in the structure of the financial system itself that mandates that float be provided, correct?

A: Correct.

Q: And when you refer to the competitive nature of lending, what you're referring to is the fact that Compeer's customers may have other financial institutions that they could go to, correct?

A: Correct.

Q: And you're referencing the fact that those other financial institutions, to your knowledge, offer – or at least some of them offer – float, correct?

A: Again, float is a function of an outcome, not something that they specifically offer. They would transact business in a way that would allow float to happen.

Q: But that's a choice that the lending institution makes, correct?

A: Correct.

[27] All of which is besi(de the point where a given cheque on which Compeer advanced funds was NSF, as was the case for the end-stage cheques in question here. As noted above, no one disputes that Compeer allowed, and the Sunterra US entities received, conditional credit.

[28] The problem is (as here) when the cheques on which such credit was advanced turn out to be NSF.

[29] Was this cheque kiting?

D. Evidence of cheque kiting

[30] Sunterra says that "Compeer has adduced no evidence that cheque kiting has occurred."

[31] It says that, via intercompany cheques, it ensured, or try to ensure, that none of the Sunterra bank accounts in question went into overdraft i.e. that sufficient balances to cover issued cheques always existed (at least up until the end stage).

[32] Compeer disagrees, saying that such "coverage" of otherwise-present overdrafts was illusory i.e. that cheque kiting occurred and on a massive scale.

[33] Here is the crux of the Compeer-Sunterra dispute: are cheques written on a given Canadian Sunterra entity's NBC account "covered" by conditional credit? In other words, is a cheque anchored by sufficient funds if the "funds" to "cover" the cheque are the same "funds" sent back to the account by return cheque or otherwise sourced out of "conditional credit" i.e. versus actual cash?

[34] The answer is no.

[35] Compeer's evidence of cheque kiting was offered primarily by Steve Grosland, a Compeer credit-risk officer, via his June 20, 2025 affidavit.

[36] He first described cheque kiting:

> Cheque kiting is the act of abusing the float by cycling cheques between two or more accounts under common control to use funds made conditionally available when a cheque is deposited even though funds are not actually available to honour the cheque. One cycle of a cheque kiting fraud consists of the following process:
>
> a) A cheque is drawn on Account #1 and deposited into Account #2.
>
> b) Funds are conditionally credited to Account #2 for the cheque, even if funds are not actually available in Account #1 (as this confirmation does not happen until the cheque is processed and cleared).
>
> c) A larger cheque is then drawn on Account #2 and deposited into Account #1.
>
> d) Again, funds are conditionally credited to Account #1 for the larger cheque issued from Account #2.
>
> e) The original cheque drawn on Account #1 then clears and is satisfied by the funds that were conditionally credited to Account #1 from the deposit of the cheque from Account #2. The difference in funds between the two cheques can then be extracted by the fraudster.

[37] Turning to the facts here, he continued:

> In the case of the Sunterra Group, the Canadian Sunterra Entities and the U.S. Sunterra Entities perpetuated **a cheque kiting fraud by issuing vast quantities of cheques between themselves which were not supported by the funds held collectively in the accounts.** I set out the basis for this conclusion in detail below.

[38] He then provided a specific example i.e. of a single "turn" of the cheque kiting fraud, introducing it as follows:

> A specific example of the process followed to kite funds is described below in relation to a single "turn" of the cheque kiting fraud between Sunwold Canada and Sunwold U.S. as well as a separate example for a single "turn" of the fraud as between Sunterra Canada and Sunterra U.S. **These are meant to be examples, as this process was followed hundreds of times between Sunwold Canada/Sunwold U.S. and Sunterra Canada/Sunterra U.S.**

[39] I reproduce here the Sunterra example:

> An example of cheque kiting mirroring the process described [at para 36 here] as between Sunterra Canada and Sunterra U.S. is as follows:
>
> a) On January 21, 2025, **Sunterra Canada issued eleven cheques, totalling $10,000,000 to Compeer to be credited to the Compeer Account of Sunterra U.S**. All

eleven cheques were signed by Debbie Uffelman. Copies of these cheques are attached as Exhibit "10."

b) According to banking records produced by [CWB], on January 21, 2025, **Sunterra Canada's bank account had a closing day balance of $22,189.54.** As a result, Sunterra Canada did not have funds available to pay the $10,000,000 in cheques issued against that account.

c) These cheques were received by Compeer in Mankato [Minnesota] on January 22, 2025 and **credited to the account of Sunterra U.S. that same day. Prior to depositing the cheques the Sunterra U.S. account balance was $1,046,882 (being less than the $10,000,000 so funds did not exist between both accounts to satisfy payment of the cheques).** Attached as Exhibit "11" is a true copy of Compeer's acknowledgment of receipt of the $10,000,000 in cheques form Sunterra Canada for deposit into the Compeer account of Sunterra U.S. Attached as Exhibit "12" is a true copy of Sunterra U.S.'s January 2025 account statement showing that the account was credited with the funds on January 22, 2025.

d) On January 23, 2025, **Sunterra U.S. issued 12 cheques, totaling $11,690,000 payable to Sunterra Canada.** All 12 cheques were signed by Debbie Uffelman. Copies of these cheques are attached as Exhibit "13", which are true copies of excerpt from Exhibit "AA" of the [Raymond] Pai] [NBC employee] Affidavit. According to Sunterra Canada's bank statements, **these cheques were deposited the same day into the Sunwold Canada bank account at which time funds were credited into Sunterra Canada's account.**

e) According to Sunterra Canada's bank statements, **the January 21, 2025 cheques first described in paragraph (a) above, cleared on January 27, 2025, using the funds made available from the deposits from Sunterra U.S.** (as the balance in Sunterra Canada's bank account when the January 21, 2025 cheques were issued was negligible and the only significant inflow of funds was from depositing cheques from Sunterra U.S.). [emphasis added]

[40] Mr. Grosland then detailed the growth, eventually astronomical, of the intercompany transaction between the Canadian and U.S. Sunterra entities.

Year	Total Transaction Amounts
2005	$14,252,840.36

2006	$21,965,514.23
2007	$34,086,356.86
2008	$58,662,782.17
2009	$70,457,849.34
2010	$97,498,566.67
2011	$139,378,210.35
2012	$276,609,665.52
2013	$823,576,240.61
2014	$748,124,993.66
2015	$606,209,483.33
2016	$545,450,847.78
2017	$530,861,258.84
2018	$429,793,524.28
2019	$1,051,590,285.47
2020	$762,092,004.52
2021	$1,243,870,618.67
2022	$2,529,146,422.69
2023	$4,204,812,876.87
2024	$6,297,525,136.98

[41] He then detailed the "discovery of fraud and computation of [Compeer's] loss":

> The fraud continued up until February 11, 2025 when, as detailed below, **Compeer terminated the cheque-writing privileges of the U.S. Sunterra Entities.**
>
> Between January 27 and February 10, **Compeer received cheques that amounted to $80,904,000 from Sunterra Canada payable to Compeer for deposit into the Compeer Account of Sunterra U.S. and cheques that amounted to $67,200,000 from Sunwold Canada payable to Compeer for deposit into the Compeer Account of Sunwold U.S.** Compeer credited the

respective accounts in these amounts upon receipt of the cheques. However, not all of the cheques had cleared by February 11. I attach as Exhibit "15" through Exhibit "23" true copies of these bundles of cheques as received by Compeer.

These amounts are **significantly more than the stated annual revenues of the U.S. Sunterra Entities.** For example, attached as Exhibit "24" is a true copy of the income statements that Sunterra U.S. and Sunwold U.S. provided to Compeer in connection with the renewal of its [certain line of credit] which took place in October of 2024. In that document, Sunterra U.S. stated it had $3,373,157 in revenue up to August 24, 2024 (which, annualized, is $5,239,159) and Sunwold U.S. stated it had $21,666,936 in revenue up to August 31, 2024 (which, annualized, is $32,500,404). **The deposits made in the two-week period preceding February 11, 2025 are many multiples of the stated annualized revenues of these entities**.

In hindsight and based on this analysis undertaken after the February meetings with Ray Price [Sunterra's CEO], discussed below, there are **obviously no business reasons for the transactions I have described**, and the rationale provided by Ray Price to Nic Rue [Compeer employee] for the approach to intercompany transactions and the use of cheques was a ruse to conceal the Cheque Kiting Scheme.

As of February 5, 2025, the **Sunterra Customers had a combined positive balance of approximately $21,000,000 in their Compeer Accounts** as set out in the February 2025 Compeer Account statements, contained in Exhibits 1 through 3 to my Affidavit.

This balance included the cheques that had been issued by either Sunterra Canada or Sunwold Canada and deposited and immediately credited into the accounts of Sunterra U.S. or Sunwold U.S. However, many of these cheques had not yet claerd (and so Compeer had not yet received the funds from Sunterra Canada or Sunwold Canada). Accordingly, and as it was determined in the following weeks, **the balance in the amount of $21,000,000 was entirely made up of conditional credit.**

Attached as Exhibit "25" is a true copy of e-mail correspondence exchanged between Compeer's in-house counsel and Ray Price. As set out in that correspondence:

a) On February 11, 2025, Compeer alerted Ray Price that it had identified concerns with the volume of apparently offsetting cheques that were being issued back and forth between the accounts held by the U.S. Sunteerra Entities and accounts operated in Canada with Canadian Western Bank. Compeer also advised Ray Price that **Compeer would immediately suspend cheque writing privileges for the U.S. Sunterra Entities for any inter-company transfers.**

> **b)** On February 13, 2025, Compeer, in writing, renewed an earlier **request** made in discussions with Ray Price for the provision of **information from Sunterra Group's Canadian Western Bank accounts to allow Compeer to validate the balances in those accounts (so as to confirm that funds were available to satisfy cheques that had previously been deposited** to the U.S. Sunterra Entities' Compeer Accounts).

Because Compeer terminated cheque writing from the U.S. Sunterra Entities, the kiting fraud could not longer be sustained as there would be **no new cheques from the U.S. Sunterra Entities available to deposit to the Canadian Sunterra Entities to fund earlier cheques issued by the Canadian Sunterra Entities and previously deposited to the U.S. Sunterra Entities' accounts**. **Without funds available, the earlier cheques issued by the Canadian Sunterra Entities were dishonoured for insufficient funds**. The cycle of the Cheque Kiting Scheme had been broken, further confirming it in fact a cheque kiting scheme.

Attached as Exhibit "26" is a true copy of e-mail correspondence, dated February 14, 2025 from Ray Price advising Compeer that **$12,300,000 in cheques drawn on Sunwold Canada's account (previously deposited and credited to Sunwold U.S.'s Compeer Account) were being dishonoured by [CWB] and $16,600,000 in cheques drawn on Sunterra Canada's account (previously deposited and credited to Sunterra U.S.'s Compeer Account) were being dishonoured by [CWB].**

...

... Ultimately, $59,900,000 in cheques which had been issued by either Sunterra Canada or Sunwold Canada and which had previously been deposited into the accounts of Sunterra U.S. or Sunwold U.S. and credited by Compeer were dishonoured. These cheques were dishonoured because Sunterra Canada and Sunwold Canada did not have sufficient funds in their accounts. They did not have sufficient funds as Compeer was no longer letting the U.S. Sunterra Entities issue cheques and the conditional credit provided by Compeer and National Bank was no longer granted. The jig was up.

As a result, as of February 28, 2025, **the positive balance (of approximately $21,000,000 that had existed in the Compeer accounts as of February 5, 2025) had become a $35,924,307.05 negative balance, representing the loss that Compeer experienced as a result of the kiting fraud** (the "Loss"). The amount of the Loss exceeded the amount of credit advanced by Compeer in the [above-noted line of credit]. [emphasis added]

[42] Sunterra's counsel cross-examined Mr. Grosland on his affidavit.

[43] Asked what evidence he relied on to support his characterization of Sunterra's above-described activities as cheque-kiting, he referred to the recent level of intercompany cheques (approximately $15 million per day), the disproportionality between that level of intercompany

cheques compared to (at least) the U.S. Sunterra entities' revenues ("I could not find a legitimate business purpose for the movement of these funds"), the use of physical cheques, and the amounts of the cheques (always below $1,000,000 US even when, on a given day, much more was being transferred, and randomly selected amounts for the individual cheques).

[44] Asked if there "were ... any other red flags on this issue?", he answered:

> Well, if we want to get into the specific details, we can start reading at [para] 23 and continue until [para] 34 [of my June 20, 2025 affidavit i.e. those reproduced in para 50 above] because that pretty much covers the section of – what do you call this? – a definition affidavit that I had signed on June 20th.

[45] Notably, Sunterra's counsel did not cross-examine Mr. Grosland on any of his evidence in those paragraphs i.e. the distillation of Compeer's analysis of Sunterra's end-stage chequing activities and the losses incurred by Compeer.

[46] That is, Sunterra did not challenge Mr. Grosland n his evidence that (among other aspects):

- "without funds available [i.e. after Compeer suspended the U.S. Sunterra Entities' inter-company cheque privileges], the earlier cheques issued by the Canadian Sunterra Entities were dishonoured for insufficient funds";
- "$59,900,000 in cheques which had been issued by either Sunterra Canada or Sunwold Canada ... were dishonoured. These cheques were dishonoured because Sunterra Canada and Sunwold Canada did not have sufficient funds in their accounts. They did not have sufficient funds as Compeer was no longer letting the U.S. Sunterra Entities issue cheques and the conditional credit provided by compeer and [NBC] was no longer being granted"; and
- "as a result, as of February 28, 2025, the positive balance (of approximately $21,000,000 that had existed in the Compeer accounts on February 5, 2025) had become a $35,924,307.05 negative balance, representing the loss that Compeer experienced as a result of the kiting fraud."

[47] Neither did Sunterra cross-examine or otherwise challenge Mr. Grosland on his evidence providing examples of "turns" of Sunterra's impugned chequing activities (paras 16 and 17 of his affidavit).

[48] Or that these examples reflected a "process [that] was followed hundreds of times between Sunwold Canada/Sunwold U.S. and Sunterra Canada/Sunterar U.S."

[49] Neither did Sunterra provide any evidence showing that any of the end-stage cheques (i.e. those dishonoured by NBC and which Compeer had earlier credited in full to the U.S. Sunterra entities) were anchored by sufficient actual funds i.e. factoring out conditional credit i.e. the "coverage" of the original cheque by the deposit of U.S.-originating "funds" existing only as cheques.

[50] In the circumstances outlined by Mr. Grosland in his affidavit, and particularly paras 23-34 (reproduced at para 41 above), if Sunterra had asserted that the end-stage cheques were

anchored by actual (and sufficient) funds -- i.e. not just the mirage of funds created by the intercompany transfers, it would have had a practical onus to show that.

[51] However, Sunterra did not assert that, with no evidence showing the existence of such actual back-stopping funds, instead falling back on the position that the end-stage cheques were covered, or would have been, if the conditional credit contemplated to cover them had not evaporated when Compeer and NBC terminated inter-company cheque transfers.

[52] The irresistible conclusion is that Sunterra engaged in cheque kiting, on an astonishing scale -- as noted, intercompany transfers, in 2024, totalling almost $6.3 billion.

[53] That is, the Canadian and U.S. Sunterra entities sent “monies” back and forth across the border, at high volumes, in large amounts, for reasons unrelated to actual business activity, with the express aim of “covering” account shortfalls by the “deposit” of incoming cheques themselves not anchored on actual cash balances.

[54] Compeer argues that, in pursuing cheque kiting, the Canadian Sunterra entities made fraudulent representations to it.

E. Fraudulent misrepresentations

[55] Compeer cites the test for fraudulent misrepresentation in ***Alberta Securities Commission v Hennig***, 2021 ABCA 411 (para 110 – part of concurring judgment of Pentelechuk JA):

a) a representation was made;

b) the representation was false;

c) the representation was made knowingly, without belief in, or with indifference to, its truth; and

d) the representation was relied on by the creditor.

[56] Both sides agreed that the reliance at the fourth step must result in a loss to the creditor.

1. Misrepresentations

a. Positions

[57] Compeer asserts that Sunterra Canada made fraudulent misrepresentations to it about the cheques in question, namely, that a given cheque issued a Sunterra Canada entity represented actual funds on deposit sufficient to cover the cheque amount, where that was not so.

[58] In particular (per Compeer):

> By issuing and then depositing cheques with Compeer, Sunterra represented that funds existed to satisfy those cheques. That was false and known by Sunterra to be false. No funds existed. The NSF cheques were deposited with Compeer to induce Compeer to credit Sunterra US accounts with funds that Sunterra could then use to write cheques back to Sunterra in Canada. This resulted in loss to Compeer when [certain] cheques that had been deposited were returned NSF ....

[59] Sunterra disagreed, responding:

> ... Compeer appears to identify the alleged false representation or representations ... as **writing cheques and thereby representing that it had the capacity to honour the cheque being issued, or that funds existed to satisfy those**

> **cheques.** Compeer has failed to establish this component of the test [for fraudulent misrepresentation]. Specifically, **Compeer has to show that the specific cheques in issue that led to the account freeze were false.** Compeer did not put this question to any of the named [Sunterra] parties during their cross-examination and did not lead any evidence to show that there were in fact false representations that are related to an alleged loss by Compeer. [emphasis added]

[60] It elaborated:

> It is [Sunterra's] submission that this [false representation] element has not been made out as against [Sunterra] for the following reasons:
>
> > At the time the cheques were written, **conditional credit was made available** by NBC (and Compeer). Further, there were funds coming into the accounts through regular sources. There is **no evidence that the specific cheques which allegedly caused losses to Compeer had insufficient funds in them at the times that the cheques were written**. Therefore, there is not evidence of any actual misrepresentation.
> >
> > ...
> >
> > At all relevant times before on or around February 11, 2025, **there were sufficient funds in the accounts of the [Canadian and U.S. Sunterra entities], in the form of conditional credit, to cover the amounts written in the cheques**, as is evidenced by the fact that none of the cheques written were rejected for NSF (no sufficient funds) until after that conditional credit was withdrawn by both Compeer and NBC after February 11, 2025. [emphasis added]

b. Representation inherent in cheque

[61] What is represented when a cheque is issued?

[62] For a post-dated cheque, there is an "implied representation that [such] cheques would clear": ***Bank of Nova Scotia v Five Star Motor Group***, 2020 ABCA 244 (para 43).

[63] For cheques generally, see ***Semac Industries Ltd v 1131426 Ontario Ltd***, 2001 CanLII 28375 (ONSC) (Cameron J.):

> **The plaintiffs clearly relied on** Bancroft's creditworthiness as assessed by the plaintiffs and on **Bancroft's representation implied in cheques drawn by it that it had sufficient funds in the account to meet the cheque** and, absent cause, Bancroft would not countermand the cheque. ... [para 65]

[64] And ***Wilson v Minister of Employment and Immigration***, [1981] 1 FC 324: (FCA)

> An N.S.F. cheque can be said, in the appropriate circumstances, to be a **representation of the fact that the writer of the cheque is possessed of sufficient funds** standing to his credit in the bank upon which the cheque is drawn, to enable that bank to pay the amount shown on the cheque to the payee thereof. …

[65] And ***R v Briltz***, 1981 CanLII 2178 (SKDC), where Geatros J. held that the representation is that sufficient funds will be present when the cheque is presented for payment:

> The nature of the representation when a cheque is given and the effect of s. 320(4) [*Criminal Code of Canada*] is correctly stated, in my view, in *Mewett & Manning. Criminal Law* (1978), at pp. 517 and 518, as follows:
>
> > Subsection (4) of s. 320 refers to the problem of obtaining something by means of a worthless cheque. A cheque is merely an order to a bank to pay a sum of money in the future and thus it is not, in itself, a representation of an existing fact. But while it is not a representation that sufficient funds are in the bank at the time it is drawn, **it is a representation that the cheque will be honoured when presented** …. [para 7 of *Briltz*]

[66] And ***R v McManus***, [1924] 3 DLR 297, 1923 CanLII 441: "The mere fact of a person giving a cheque when he knows he has no money in the bank to meet the cheque is a false representation" (p 256).

[67] Sunterra asserts that, by sending cheques north to be deposited before the south-going cheques cleared (i.e. by using "conditional credit" to prevent overdrafts), it was in fact ensuring that the south-going cheques were honoured i.e. that they were not in fact NSF cheques.

[68] Is the representation that a cheque will be honoured when presented for clearance satisfied in such circumstances? That is, where the return cheques (north-going) represent, effectively, a "balance" created by the deposit of the south-going cheques written on insufficient balances i.e. where the initial cheque is NSF i.e. where the "balances" are not reflective of actual funds?

[69] In other words, where south-going cheques are NSF at the outset (i.e. when issued), and they are deposited with Compeer, and Compeer gives full credit (e.g. advances funds to or pays down a line of credit) to or for the Sunterra U.S. entities, and the balance of the Canadian Sunterra entities can only be made "whole" (or ostensibly whole) by north-going cheques which themselves are NSF at the outset (i.e. when issued), is actual value being injected into the Canadian accounts?

[70] The answer is no.

[71] And when the music stopped (using the analogy from ***Location Bristar***) i.e. when Compeer declined to honour any further north-going cheques, the lack or insufficiency of actual value in the Canadian accounts -- i.e. to anchor the initial south-going cheques – was exposed

[72] "Covering" a cheque by depositing another cheque based on only a mirage of value breaches the representation that sufficient funds will exist to cover the cheque when presented for clearance.

c. "No evidence of actual misrepresentations"

[73] On the misrepresentation point, Sunterra also argued that:

> [t]here is no evidence that the specific cheques which allegedly caused losses to Compeer had insufficient funds in them at the times that the cheques were written. Therefore, there is no evidence … of any actual misrepresentation.

[74] As discussed above under cheque kiting, I have already found that Compeer provided sufficient evidence that the end-stage cheques (i.e. those from Canadian Sunterra entities on which Compeer advanced funds or credited to U.S. Sunterra entity liabilities but on which NBC stopped payment on or around February 12, 2025) were not supported by actual funds on deposit, instead only "supported" by phantom funds resulting from the volleying of cheques back and forth. And, in any case, that the Canadian Sunterra entities did not provide any evidence to show support by actual funds.

[75] The implicit representation of actual support inherent in those cheques was breached here.

d. "No expert evidence"

[76] Sunterra next says that:

> Compeer failed to adduce any expert evidence on [the misrepresentation] issue. Further, Compeer did not even present evidence from the individuals at Compeer who had conducted their internal analysis.

[77] I find that expert evidence was not necessary here. The examples of cheque kiting provided by Mr. Grosland (showing account balances largely not reflective of actual (instead only illusory) funds), his evidence that the cheque-kiting examples were representative of Sunterra's overall chequing activities in the period leading up to the stop-payments by the banks, and his calculations of Compeer's losses resulting from the extinguishment of the conditional credit (when the "air in the system" was released and the dearth of actual funds backstopping the end-stage cheques was exposed) was clear, comprehensive, and convincing i.e. without any need for forensic-accounting expert evidence.

[78] Particularly when coupled with the absence of counter-evidence from Sunterra Canada i.e. that the end-stage cheques were adequately anchored by actual funds.

2. Knowledge by representor that representation false or recklessness as to truth or falsity

[79] Sunterra asserts an honest belief that the cheques in question were, or were supposed to be (i.e. absent the stop payments at the end), backed by contingent credit i.e. actual funds were not required:

> … Compeer say[s] in effect that [the representation inherent in a cheque is] that it includes funds on deposit, and the **Sunterra Parties say that it includes credit and conditional credit**[,] which they believed that Compeer [was] aware of and agreed to give.

[80] Sunterra says that a subjective belief in the sufficiency of conditional credit (i.e. to backstop a given cheque) is sufficient:

> In these circumstances, the court must determine **whether the representor honestly believed that the representation was true in the sense in which he or she understood it when making it, even if that understanding was objectively wrong.**

[81] Its position is that, on the facts here:

> … **Compeer has failed to prove that the Sunterra Parties did not honestly believe the truth of any representations made by the writing of the cheques** in the sense in which they understood it, even if Compeer can establish that that meaning was objectively wrong.

[82] It elaborated on the conditional-credit aspect:

> … the Account Coverage Practice [i.e. the use of conditional credit to "cover" account shortfalls and "prevent" overdrafts] was **carried out over a long period of time to maintain positive account balances and prevent overdrafts** in the context of the lack of real-time visibility of the balance of the accounts and the complexity and multiplicity of business and interactions between the companies in the group; and
>
> … the Account Coverage Practice was **carried out honestly, understanding that some conditional credit was being utilized with the knowledge and agreement of Compeer and NBC.**

[83] Compeer's position is that conditional credit was not sufficient in this context and that the Canadian Sunterra entities knew that and that actual funds were not present to backstop the cheques:

> The Canadian Sunterra Entities **knew there were insufficient funds to support the cheques**. The Canadian Sunterra Entities operated under common control and management with the US Sunterra Entities and, as has been conceded by its senior executive officers … through its "account coverage practice", **corporate records** were being maintained tabulating precisely **how much float was being generated** and taken advantage of, and the calculating the quantum of the **shortfall in terms of the actual funds that the Canadian Sunterra Entities had available net of the cheques that had been cycled** as part of the kiting scheme.
>
> Each of [three named Sunterra employees] **knew that the representation that the Canadian Sunterra Entities had sufficient funds to honour the cheques was false**. They have admitted that they actively and knowingly carried out all the elements of the kiting scheme and **knew that there were insufficient funds to cover the cheques that were being issued.**

[84] I accept Compeer's position.

[85] For the sake of analysis, I will assume that the Sunterra employees overseeing the Account Coverage Practice believed that, by writing cheques back and forth, at high volume, and in large amounts, they were covering account overdrafts and shortfalls.

[86] But I do not accept that it was an honest belief.

[87] The entire premise of the Account Coverage Practice was that, if an overdraft or shortfall were anticipated in one of the US Sunterra entities' accounts, it would be covered by a cheque from one of the Canadian entities, such cheque being drawn on an account with only a mirage of value i.e. itself the product of earlier cheques deposited which were not reflective of actual on-deposit cash.

[88] The whole idea was creating an impression of value unmatched by actual value.

[89] Consider the approximately $21 million USD collective "balance" in the US Sunterra entities' account when the intercorporate chequing privileges were revoked.

[90] It was the (partial) product of north-originating cheques, combined with Compeer advances to the southern entities and credits to their liabilities (i.e. out of those cheques). That "balance" evaporated when those cheques (totalling approximately $59 million (US$)) were declared NSF by NBC.

[91] And (as noted) Sunterra produced no evidence showing NBC's NSF stances or the resulting losses to Compeer were unjustified or inaccurate.

[92] In the end, it was all just "air in the system." After Compeer cancelled the $21 milllion "balance", it was left with a loss of approximately $35 million USD, as explained above i.e. with that amount having been advanced or credited to the US entities in the expectation that the north-emanating cheques would be honoured, with no or at least insufficient funds backing up those cheques and "coverage" of the north account shortfalls, in the form of return cheques from the south, precluded when Compeer shut down intercompany chequing privileges. In any case, such "coverage" would just have been more "air in the system."

[93] I find that, for (at minimum) the end-stage cheques, the Account Coverage Practice provided no coverage at all. Simply writing and sending cheques, without regard for the net actual balances in the accounts involved (i.e. factoring out unsupported conditional credit), cannot be honestly regarded as fulfilment of the representation that a given cheque will be honoured.

[94] I find that, in these circumstances, Sunterra Canada knew that the implicit representation in the its end-stage cheques sent south – that it had sufficient funds to honour those cheques in their face amounts – was not true.

[95] I find confirmation of such knowledge in Ray Price's answers to cross-examination questions on this topic on October 7, 2025 (pages 35, 36, 59, and 60), in particular these exchanges:

> Q: If cheques were not sent back and forth between Compeer and CWB accounts, you knew that one of the results would be sufficient funds in the accounts at Compeer?
>
> A: **We were always making sure that both CWB and Compeer accounts would not be overdraft.**
>
> Q: **And to make sure of that, you had to send the cheques back and forth; right?**
>
> A: **Cheques would have to be sent to one or the other or both to ensure that.**
>
> …
>
> Q: … **you didn't tell anyone at Compeer that the Sunterra Group didn't actually have the funds require to back the cheques that were being deposited; did you?**
>
> A: **I wasn't aware whether we would or would not at any point in time. I always felt that we would be able to cover the cheque coverage – or the**

account coverage practice over time. We'd always have enough to be able to do that.

Q: **You say "over time." You don't mean at the particular moment, but eventually?**

A: **Yes, we would use the conditional credit until we generated enough cash to not have what happened** [i.e. presumably meaning the cutting off of intercompany cheques and the associated consequences].

Q: Right. So your hope in what you were really telling [Nick Rue – Compeer officer] or what you were thinking when you told him that, was that **your hope or your plan for the future was to develop enough legitimate commercial revenue to cover those amounts; right?**

A: Our experience was that we knew we had Trochu fire insurance [proceeds] coming, that we had some other asset sale coming, and that that would increase our working capital. And **with that increased working capital, the amount of cheques that we would have to move back and forth would reduce**.

Q: **Until that time, you had to keep sending the cheques back and forth; right?**

A: **As we had done for several years.**

Q: **And until that time, the cheques were clearing based on conditional credit; right?**

A: **The cheques generated – the account coverage practice generated some conditional credit.**

Q: **And certainly you didn't tell anyone at Compeer that the cheques that were being deposited into its accounts were clearing based on conditional credit extended by CWB; right?**

A: **I wouldn't have used those words, no.**

Q: You didn't tell them that; right?

A: I didn't tell them what you said.

Q: Well, **you didn't tell them that the Sunterra Group did not have the funds required to back the cheques that were being deposited into its accounts; right?**

A: **I didn't tell them that because I wasn't aware whether it would or it would not.**

Q: **And you say would or would not. That was based on what you've told me about hoping that legitimate funds would come in the future; right?**

A: **Or that we had other deposits that would cover in the short-term, but in the longer term, yes, the expectation was that we would have more working capital available to us.**

Q: **Right. At some point in the future**.

A: **Yes.**

Q: **And until then, you lacked the funds, and so the cheques that were being transacted were backed by this conditional credit. And you agree with me, sir, that at no point did you explain this to Compeer?**

A: We had used the conditional credit for many years. We had open discussion – I had open discussions with Nick [Rue]. They were aware that cheques were being deposited to cover overdrafts and that cheques from Compeer were going to CWB to cover the bank accounts there.

Q: And you didn't' – to go back to my question, **you didn't tell them that the cheques were clearing based on conditional credit; right?**

A: **I don't believe I would have said those specific words, that's true.**

Q: And you didn't – not just those specific words, but you didn't, whatever words you would have used, tell them that's the case because, as you say in your affidavit, your understanding was based on what you call their oversight of your business and accounts; right?

A: Yes, they were looking at our accounts, and they were reviewing our accounts on a regular basis.

[96] In these collective exchanges, I find acknowledgments by Mr. Price, on behalf of Sunterra Canada, that:

- the heart of the "Account Management Practice" was the use of back-and-forth cheques to cover (or "cover") account shortfalls and overdrafts;
- the conditional credit operated both ways (north and south);
- at any given moment, and in particular at the end stages under scrutiny here, if both banks had switched to advancing funds only after a given cheque had cleared, shortfalls would have existed i.e. the "coverage" provided by the back-and-forth movement of cheques, and the movement thereby of "conditional credit" back and forth – created only the illusion of coverage;
- Sunterra understood these core realities at all times, with the only hopes for "catching up" (i.e. ensuring that all cheques were anchored in full by actual funds on deposit at any given time) was through possible future injections, whether in the form of insurance proceeds, increased corporate revenues, or otherwise; and
- in the meantime, Sunterra knew, and intended, and desired, that Compeer would continue to advance funds on the expectation of "full anchoring" and knew that such was not the case and would not be until some undefined future point.

[97] In other words, confirmation that Sunterra Canada knew that the implied representation of "full anchoring" was false.

3. False representation made with intention that it would be acted upon

[98] Per Sunterra, this is an additional element of fraudulent misrepresentation.

[99] On this element, Submit asserts no such intention::

> … it was not believed by the Sunterra Parties or any of them that Compeer would blindly act upon the representations made in the writing of the cheques. [Sunterra Canada] understood Compeer to have in-depth knowledge of
>
> a) the cheques being written, including the large number of high-value cheques being written each day between the Canadian and US Sunterra Entities;
>
> b) the fact that conditional credit was being created thereby;
>
> c) the Canadian and US Sunterra Entities' businesses, including the value of the commercial activities of the US Sunterra Entities in particular;
>
> d) the systems and mechanics for the settling of cheques and the interactions of the clearing banks between each other, if applicable, and the Banks; [and]
>
> e) [Sunterra Canada] therefore did not foresee that the writing of the cheques in issue would be relief upon blindly by Compeer on such matters which were entirely within Compeer's actual knowledge and expertise.

[100] Assuming that "intention that representation be relied on" is a required element, I find it was present here:

a) as explored earlier, Compeer knowledge of the number and value of the cheques did not equate to knowledge that they were not backed by sufficient funds;

b) as decided above, Compeer acknowledges that, by advancing funds or otherwise giving credit to the US Sunterra entities, it was giving conditional credit. But no evidence shows it advanced it with knowledge that the cheques on which it was advancing or giving credit were NSF and could only be "covered" by return cheques from the south. Instead, Compeer (reasonably) expected that the conditional credit would become actual credit i.e. by the honouring of the underlying cheques; and

c) the third and fourth factors cited by Sunterra above similarly do not undercut the intention at issue here. These are neutral factors which do not illuminate Sunterra Canada's intentions associated with its cheque-issuing.

[101] Sunterra's "did not foresee" assertion thus does not logically flow. Compeer could be, and actually was, aware of all these factors and still reasonably expect that a given cheque would be honoured.

[102] I infer that Compeer advanced funds and gave credit for incoming cheques precisely because it expected the cheques would be honoured.

[103] I also find it inescapable for Sunterra Canada that it made the "will be honoured" representations precisely because it expected Compeer would so respond.

[104] In other words, the asserted necessary intention was present here.

4. Compeer relied on the representations and suffered losses

[105] Sunterra made various arguments against "Compeer reliance, including:

- insufficient evidence;
- key Compeer personnel had "far greater knowledge, experience, and expertise than any of the Sunterra Parties in how conditional credit, or the "float", works upon the issuing of cheques";
- Compeer failed to provide evidence from one of those key persons (Jessica Ziegler); and
- a common-sense inference is that Compeer advanced conditional credit here to sustain the longstanding business relationship between Compeer and Sunterra US i.e. reflecting a desire on Compeer's part to keep their business.

[106] Sunterra says these factors "displace" the "common sense" inference urged by Compeer i.e. that "[the Canadian Sunterra entities] wrote the cheques [and] Compeer believed that [those entities] had the funds to back the cheques they were depositing."

[107] Sunterra's overarching position is that Compeer was aware of everything associated with its Account Management Practice – in particular, that cheques were being used to "cover" accounts shortfalls and overdrafts i.e. without being backstopped by sufficient funds. And, by extension, that Compeer had willingly advanced or otherwise credited the US entities a net amount of $35 million USD at the end stages i.e. knowing that those advances were not backstopped by sufficient, or any, funds.

[108] Sunterra points to the following factors as showing Compeer awareness and approval of its account management practice. (My comments are interspersed.)

> [Per Sunterra], Compeer knew that
>
> a) Sunterra was using intercompany cheques in an **"uncommon" manner**;
>
> **FINDING**: That does not translate to Compeer awareness that the "uncommon" manner included issuing NSF cheques.
>
> b) ... there were **regularly occurring overdrafts** and [a Compeer officer] had reached out to [Sunterra's CEO] with respect to these overdrafts;
>
> **FINDING**: That does not translate to Compeer awareness that Sunterra was covering, or purportedly covering, the overdrafts with NSF cheques.
>
> c) Sunterra was using **"lots" of cheques** for its transactions;

FINDING: This is a neutral fact.

d) ... these cheques were **intercompany cheques** between the Canadian and U.S. Sunterra entities and ... the daily value of these cheques was approximately $15 million and ... the **number and volume of cheques was unusual**;

FINDING: Same as first comment above i.e. this does not equal awareness that the cheques or the vast majority of them were NSF.

e) ... the cheques were **physical cheques** that were manually scanned in by [certain] personnel of Compeer;

FINDING: Another neutral fact.

f) ... the use of the cheques for intercompany funds transfers had become a **red flag**;

FINDING: As discussed further below, the red flag was not signalling the use of NSF cheques.

g) ... [Compeer] knew the **quantum** of the cheques, the **dates** of the cheques, and that these cheques were **to and from [Canadian Western Bank** [later National Bank of Canada] i.e. the Canadian lender];

FINDING: Another neutral fact.

h) ... **all appropriate financial information** was provided by Sunterra to allow for lending;

FINDING: As discussed further below, that did not extend to disclosing that the overdraft-covering cheques were NSF and that only an illusion of coverage was created.

i) ... Compeer had all the primary information it needed to come to the conclusion that Sunterra was **using conditional credit for intercompany transfers**. As put by [a Compeer official]:

> That is the primary evidence. When you've got a company that grosses probably 32 million a year and they are writing out cheques of multiple billions of dollars, I struggle to understand why a company would need to move that much money back and forth when their gross income is 50 multiples less;

FINDING: The use of "conditional credit" – i.e. the amount made available to a bank customer on the deposit of a cheque but before the cheque is paid to the receiving bank by the bank on which the cheque is drawn -- does not signal the use of NSF cheques to create the credit i.e. that a given cheque in fact has no underlying cash basis. As for the Compeer official's observation, puzzlement over why "that much money was being moved back and forth" does not imply awareness that money was not actually being so moved.

In summary, Compeer had all the base information at its disposal with respect to **knowing that Sunterra was using conditional credit in accordance with [its] [self-described] Account Management Practice [i.e. of sending NSF cheques back and forth to create the illusion of covering overdrafts].** However, Compeer did not put forward any evidence from witnesses with any first-hand knowledge and has objected to and refused to answer undertakings from witnesses [who] would have had first-hand knowledge.

> **FINDING**: This observation might have force if Sunterra had produced its own evidence of Compeer agreeing to Sunterra using NSF cheques to "cover" overdrafts i.e. evidence from Sunterra witnesses of such an agreement. But it provided none.

Even then, putting its best foot forward, **Compeer does not deny that it knew about the Account Management Practice**. When asked [a Compeer official] stated "I don't know if we knew because I don't know if anybody took the time to review it." In other words, Compeer can neither confirm nor deny that it knew. Compeer elected not to call any witnesses with actual knowledge and as such an adverse inference applies.

> **FINDING**: The quoted statement does not admit knowledge. And as noted above, the suggestion of Compeer witnesses with knowledge is empty in the absence of Sunterra evidence showing or suggesting knowledge – i.e. of the use of NSF cheques to ostensibly cover overdrafts – on the part of any Compeer official.

Additionally, Compeer has failed to call any evidence with respect to cheque-kiting. Of Compeer's two witnesses, only Mr. [Nicholas] Rue had any actual first-hand knowledge of events prior to February 2025. However, Mr. Rue:

a) was simply the "primary contact point" and was not in charge of back-office calculations;

b) did not perform any due diligence regarding the loans or undertaking, [which] was done by Ms. [Rachel] Ziegler[,] who was not produced and whose undertakings were refused; and

c) it was "not his job" to look at frauds and indeed he didn't even know "who that person is."

The second witness, Mr. [Steven] Grosland, had no personal knowledge and was called in after the fact; however, the primary purpose of his job was to protect "collateral" as opposed to investigating fraud. Mr. Grosland confirmed that

a) He was not an accountant;

b) He did not conduct a forensic audit;

c) It was never the primary purpose of his job to make a determination with respect to whether there was cheque kiting; and

d) ... [T]he decision with respect to whether cheque kiting had occurred had been made prior to his involvement.

FINDING: as explained above, Mr. Grosland provided sufficient evidence to prove cheque kiting by Sunterra. And Sunterra provided no evidence to show that, for the ending-stage cheques deposited with Compeer, on which Compeer advanced funds before receiving (anticipated) payment from CWB and which constitute Compeer's approximately $35 million USD shortfall, and which were not ultimately paid by CWB, were in fact anchored by sufficient cash. In other words, Sunterra did not show that, focusing on real cash balances (i.e. ignoring NSF cheques), it had sufficient cash balances in its CWB accounts to cover the cheques on which Compeer ended up over-advancing by the noted amount.

[109] Sunterra tried to show that various Compeer officials were aware of, and approved, its "account coverage practice."

[110] However, Compeer's questioning of Sunterra's witnesses showed that these were, at most, assumptions by those witnesses. Per Compeer:

> In cross-examination, Craig Thompson and Debbie Uffelman [Sunterra officials] both confirmed that their belief that Compeer was aware of and approved their ... conduct was based on their assumption that Compeer could have ascertained what Sunterra was doing on a review of Compeer account statements. They purported to hold this belief despite there being no evidence that any positive affirmation, consent, or approval was either sought form (or provided by) Compeer. As conceded by [Ms.] Uffelman:
>
> > Q: All right. So am I right in understanding that you had the same view that you heard from Mr. Thompson, that your understanding was based on what you believed Compeer had access to in terms of account records, rather than any specific advice or approval that you sought from Compeer? Is that fair?
> >
> > A: Yes.
>
> Ray Price also conceded that Compeer never had access to all of the information that would have been required for Compeer to have put the pieces of the [impugned cheque practice] together – namely access to the accounts of <u>both</u> the US and Canadian Sunterra Entities. He further conceded that he never told Compeer that Sunterra lacked the funds necessary to back the cheques that were being deposited into, and withdrawn, from the Compeer accounts or that the cheques that were being issued were only clearing based on the use of conditional credit (another phrase that has been used to describe the float) from other cheques [i.e. not anchored by actual cash]:
>
> > Q: And you didn't – to go back to my question, you didn't tell [Compeer] that the cheques were clearing based on conditional credit; right?

> A: I don't believe I would have said those specific words, that's true.
>
> Q: And you didn't – not just those specific words, but you didn't, whatever words you would have used, tell that that's the case because, as you say in your affidavit, your understanding was based on what you call their oversight of your business and accounts; right?
>
> A: Yes, they were looking at our accounts, and they were reviewing our accounts on a regular basis.

[111] On this aspect, I accept Compeer's position that it "did not have knowledge of the [impugned cheque practice], did not approve it, and would have closed Sunterra's accounts if Compeer had known." As reflected in the evidence of Compeer's primary point of contact with Sunterra, Nicholas Rue, who described his reaction after learning of the massive shortfalls in Compeer's accounts in February 2025:

> Ray Price's comments on our call on February 12, 2025 came as a complete surprise to me and were contrary to everything he had told me in the previous three years. Up until that point, I had trusted the information that Ray Price and Debbie Uffelman had often provided in explaining to me that the inter-company transfers were being done for operational reasons and that they took the form that they did for tax planning purposes and that there would be funds available to support the cheques. It was only on February 12, 2025 that I came to learn those statements had been a lie.

[112] Sunterra also submitted that Compeer did not produce witnesses with first-hand knowledge of its account overage practice and Compeer's (claimed-by-Sunterra) approval of it.

[113] First, Sunterra had the option of choosing, at large, any two Compeer employees for examinations under Rule 6.8 i.e. in addition to witnesses already identified by Compeer as its witnesses. And Sunterra chose to examine Compeer's CEO and its Chief Risk Officer, who (understandably) had no direct knowledge of Compeer's day-to-day dealings with Sunterra i.e. with them only becoming aware of anything to do with Sunterra starting in early February 2025.

[114] More fundamentally, as seen above, Sunterra did not provide any evidence of any specific persons at Compeer being aware that any given cheque, let alone hundreds, coming from Canadian Sunterra entities, in the end stages, were not anchored by face-amount-corresponding amounts on deposit in the Canadian bank accounts i.e. that account shortfalls on both sides of the border were being "covered" merely by the back-and-forth flow of cheques i.e. with no underlying cash present.

[115] Compeer did not know, and could not, have known the state of the Canadian accounts at any given time, given Sunterra's siloed banking i.e. with NBC in Canada and Compeer in the U.S. and with no evidence showing that Sunterra ever authorized the interbank exchange of information e.g. on the state of account balances from time to time. On this aspect, I find confirmation in the "limited visibility" evidence of Ray Price (October 7, 2025 cross-examination, pp 26-29.)

[116] All to say: Compeer was not in fact aware, until early February 2025, shortly before cheques were stopped in both directions, that the north-emanating cheques were not in fact anchored by sufficient funds to cover the cheque face amounts.

[117] In other words, Compeer was not aware of and in any case did not approve the use of NSF cheques to "cover" account shortfalls, which use did not in fact accomplish that objective.

[118] I return to the reliance test, on which Compeer's position is simple:

> Compeer relied on the representations made by the Canadian Sunterra Entities and three key employees – Ray Price, Debbie Uffelman, and Craig Thompson – by accepting the cheques issued from the accounts of the Canadian Sunterra Entities and permitting the US Sunterra Entities to use the funds that were being deposited before those funds made their way to Compeer through the process of cheque clearance. **At all material times, Compeer believed that Sunterra had the funds to back the cheques that they were depositing. Compeer credited the Compeer Accounts of the US Sunterra Entities based on that belief**. Once the fraud unraveled, Compeer was left with a loss. Had the truth been known, Compeer would have closed Sunterra's accounts. …

[119] I accept Compeer's position. No evidence here is at odds with the common-sense proposition that Compeer advanced funds and otherwise extended credit to the US Sunterra entities on the incoming cheques because they thought they would be honoured.

[120] For instance, no evidence showed that, if Compeer had been advised earlier that it was giving conditional credit on the strength of NSF cheques, it would have continued that practice "to keep Sunterra's business".

[121] Or that Ms. Ziegler or anyone else at Compeer had approved the granting of conditional credit *with knowledge of NSF-incoming cheques*.

[122] On the loss aspect, Sunterra makes the same "no evidence" argument addressed earlier.

[123] I repeat my finding from earlier: Compeer's evidence proved that it incurred losses of approximately $35 million USD when cheques from the north on which it had advanced funds or otherwise advanced credit to the southern entities were dishonoured by NBC, with Sunterra providing no evidence of sufficient funds present in the north accounts to cover those cheques.

5. Camouflaging steps by Sunterra

[124] I accept Compeer's position that, in asserting at various points that the back-and-forth movement of intercompany cheques was required (even if just in part) because of differential accounting practices between the Canadian and US companies, or for "taxation reasons", or reflected in the main the movement of revenues and expenses among the companies, Sunterra Canada aimed at -- and largely accomplished (i.e. until the music stopped), shielding the essential character of the vast bulk of those movements i.e. the volleying of conditional credit, with inadequate backing, back and forth i.e. aimed at creating the (false) impression that account shortfalls and overdrafts were actually being covered.

[125] As also reflected in what I find was Sunterra's foot-dragging on Compeer's requests to move away from intercompany funds transfers via cheque. Given the massive amount of conditional credit at the heart of the account management practice, there was no practical way for

Sunterra to move away from cheques i.e. without exposing the massive shortfalls inherent in the volleying of conditional credit.

6. Conclusion on fraudulent misrepresentation

[126] For these reasons, I find that Sunterra Canada made false representations knowingly, intending that they be relied on, which Compeer did rely on, suffering the noted losses.

F. Liability of Ray Price, Debbie Uffelman, and Craig Thompson

[127] Pointing to what it sees as their central involvement in the conception or at least the day-to-day operation of the "Account Coverage Practice", Compeer seeks personal judgments against each of these Sunterra employees i.e. in addition to a judgment against the Canadian corporate entities (discussed further below).

[128] At the material times, Mr. Price was a director and the president of the Sunterra Canada entities (among other entities), Ms. Uffelman was the vice-president of corporate finance for those entities (among other entities), and Mr. Thompson was a member of their accounting staff (whether as "controller" or otherwise). Ms. Uffelman reported to Mr. Price. Mr. Thompson reported to Ms. Uffelman. Ms. Uffelman and Mr. Thompson had signing authority on the Sunterra Canada banking accounts (among other accounts).

[129] Per Compeer, Mr. Price "personally directed and oversaw the cheque kiting fraud", with Ms. Uffelman and Mr. Thompson playing key roles in executing it.

[130] Sunterra's counsel, also representing the three employees, resisted, invoking the concept of the corporate veil and arguing that:

- "any … actions and conduct [of these employees] were not tortious, [with Compeer not identifying any] separate identity of interest from that of the corporations so as to make the allegedly impugned actions or conduct their own" (citing ***Peoples Department Stores Inc (Trustee of) v Wise***, 2004 SCC 6);
- "[none of the Sunterra corporations] were dominated and controlled and being used by [these employees] or any of them as a shield for fraudulent or improper conduct (citing ***Swanby v Tru-Square Homes Ltd***, 2023 ABCA 224 (para 36); and
- "there is **no factual underpinning** pleaded by Compeer to support allegations that any of [these officers] **acted outside their capacity as officers, directors or employees of the relevant entities**, there was **no separate identity of interest** and **none of the actions or conduct alleged were carried out for the benefit of any of [them]"** (citing ***Peoples*** (cited above) at para 46).

[131] In its brief, Compeer did not address these submissions, cite or otherwise mention these cases, or cite or invoke any authorities on the issue of when corporate directors, officers or employees have personal exposure for activities (such as fraudulent misrepresentations) carried out in whole or in part in a corporate setting.

[132] Its only comment via brief was that each of the requirement elements for fraudulent misrepresentation were satisfied for each of them (para 58 of Compeer's brief), citing ***Alberta***

Securities Commission v Hennig, 2021 ABCA 411 at para 110, which simply outlines the four-part test for fraudulent misrepresentation.

[133] However, in oral argument, Compeer cited ***Zerbin v Vrbanek***, 2021 ABCA 317. (In its oral argument on this point, Sunterra cited and provided a copy of Mah J.'s decision in that case -- 2020 ABQB 797).

[134] Compeer noted that Mah J. had found personal liability for the "sole shareholder, director and principal" of the corporate defendant, that that finding was anchored on that person's central involvement in the fraudulent and deceitful acts alone (i.e. did not require evidence of that person having acted in any independent (i.e. non-corporate) capacity), and that this did not involve or require "piercing the corporate veil."

[135] It also emphasized that the ABCA had upheld Mah J.'s decision on the personal-liability-for-fraud aspect.

[136] I note that leave was sought to appeal the ABCA decision to the Supreme Court of Canada but was denied: 2022 CanLII 21684 (SCC).

[137] In ***Zerbin***, Mah J. drew on ***1234389 Alberta Ltd v 606935 Alberta Ltd***, 2020 ABQB 28 (Kirker J. as she then was), which offered the following synopsis of the governing legal principles here:

> **Dr. Phu [sole shareholder, director, and officer of the corporation involved] argues that she is not personally liable because everything she did was for the purpose of her business and done in the course of that business.** She also argues that this is not a circumstance in which the corporate veil should be pierced.
>
> There are two areas of law implicated in Dr. Phu's position: (i) the liability of directors and officers for torts committed while conducting corporate business; and, (ii) the principle of corporate separateness, which says that a corporation is a legal person separate from its shareholders (*Salomon v Salomon & Co*, [1897] AC 22).
>
> **While there is some conflicting authority in relation to when directors and officers are personally liable for ordinary negligence, there is no such doubt when the facts invoke fraud, deceit or dishonesty:** Slatter JA in *Hogarth* at para 96, citing *ScotiaMcLeod Inc. v Peoples Jewellers Ltd.* (1995), 1995 CanLII 1301 (ON CA), 26 OR (3d) 481 (CA) at paras 25-26. This aligns with the requirements in the *Business Corporations Act*, RSA 2000, c B-9, s 122 that every director in exercising her powers and discharging her duties shall act honestly and in good faith with a view to the best interests of the corporation. Section 122(3) further states that no provision in a contract, the articles, bylaws or a resolution can relieve the director from liability for breach of this duty.
>
> **When a director and officer of a corporation acts in a fraudulent manner, as I find Dr. Phu has done, that individual is no longer acting in the best interests of the corporation and is personally liable for their tortious actions:** *Dominion of Canada General Insurance Co. v MD Consult Inc.*, 2013 ONSC 1347 at para 25 (leave to appeal dismissed 2013 ONSC 6906), citing *ADGA*

> *Systems International Ltd. v Valcom Ltd.* (1999), 1999 CanLII 1527 (ON CA), 43 OR (3d) 101 (CA).
>
> It does not offend the principle of corporate separateness to impose personal liability on Dr. Phu for her fraudulent misrepresentation because **her actions as the directing mind of the Seller "exhibit a separate identity or interest from that of the [Seller] so as to make the act or conduct complained of her own":** *Hogarth*, per O'Brien and Rowbotham at para 13, citing *Blacklaws v 470433 Alberta Ltd*, 2000 ABCA 175, leave to appeal refused [2001] 1 SCR vii.
>
> The point here was summarized in *ADGA Systems International* at 105 where the Ontario Court of Appeal said:
>
> ... the House of Lords' decision in *Salomon v. Salomon & Co. Ltd*., [1895-9] All E.R. 33 (H.L.), ... established that a company, once legally incorporated, must be treated like any other independent person, with rights and liabilities appropriate to itself. From time to time, litigants have sought to lift this "corporate veil", by seeking to make principals of the corporation liable for the obligations of the corporation. However, where, as here, the plaintiff relies upon establishing an independent cause of action against the principals of the company, the corporate veil is not threatened and the Salomon principle remains intact.
>
> The distinction between an independent cause of action and looking through the corporation was confirmed by the subsequent case of *Said v. Butt*, [1920] 3 K.B. 497. This is a King's Bench decision but has been adopted in Canada and throughout the United States. (See, for instance, *Kepic v. Tecumseh Road Builders* (1987), 18 C.C.E.L. 218 at p. 222, 23 O.A.C. 72; and *Golden v. Anderson*, 64 Cal.Rptr. 404 (1967) at p. 408.)
>
> I find that, on the facts of this case, **Dr. Phu is independently liable for the Purchaser's damages caused by her intentional tortious conduct in her capacity as director and officer of the Seller. It is not necessary to pierce the corporate veil to attach liability to Dr. Phu in that capacity**. [paras 158-164] [emphasis added]

[138] Nothing in the facts of that case seems to reflect Dr. Phu having acted in any way outside of her role(s) as shareholder, director, and officer, in the sense of "I am taking off my corporate hat and now acting exclusively as an individual."

[139] That is, unless by its very nature, fraudulent or deceitful conduct by a corporate representative stands outside those roles or at least those proper roles.

[140] That is Kirker J.'s finding, as explained by her reference to such conduct not being in the corporation's best interests.

[141] In any case, the same circumstances were at play in ***Vrbanek***, with no evidence showing any particular "now acting exclusively as an individual" activity, yet Mah J. (and the ABCA in upholding his decision) found personal liability for the central person's deceitful and fraudulent conduct i.e. with such liability attaching given the nature of the "directing mind" role(s) and the nature of the activities (deceitful and fraudulent).

[142] Here are Mah J.'s findings on this aspect:

… with respect to personal liability:

> • An individual director can be held personally liable for civil fraud *without* the necessity of piercing the corporate veil. In *1234389 Alberta Ltd v 606935 Alberta Ltd*, 2020 ABQB 28, Kirker J found that "while there is some conflicting authority in relation to when directors and officers are personally liable for ordinary negligence, there is no such doubt when the facts invoke fraud, deceit or dishonesty" (*1234389 Alberta Ltd* at para 160).
>
> • Finding a director personally liable for fraud is in alignment with the *Business Corporations Act*, RSA 2000, c B-9, s. 122, because **"when a director and officer of a corporation acts in a fraudulent manner [...] that individual is no longer acting in the best interests of the corporation and is personally liable for their tortious actions"**: *1234389 Alberta Ltd* at para 161.
>
> • Kirker J further reasoned that "it does not offend the principle of corporate separateness to impose personal liability [...on a director for] fraudulent misrepresentation because **her actions as the directing mind [...] exhibit a separate identity or interest from that of the [company] so as to make the act or conduct complained of her own":** *1234389 Alberta Ltd* at para 162.
>
> • Similar reasoning has emerged from Ontario, where the Court in *Mughal* found that "directors are personally liable for their own tortious conduct at law, even if they claim to have been acting on behalf of a corporation": *Mughal* at para 45.

It is obvious from the foregoing evidence that **the presentation of the Progress Invoices and the spending of the Zerbins' money were a manifestation of the hand and will of Mr. Vrbanek.** Kevin Vrbanek was clear that his father exercised complete control and authority over receivables and payables. Mr. Vrbanek's inability to explain certain events and transactions, such as forged documents, charged deposits that were never requested, and the reversal of payables with no corresponding credits to the customer, are just not credible.

Further, **it does not matter that Mr. Vrbanek did not divert the Zerbins' money into a slush fund or offshore account, as his counsel argued, but rather used them to pay DN's ordinary expenses.** The point is that the Zerbins placed the funds in DN's hands for a specific purpose and some of those funds were used for totally unauthorized purpose.

Here, "**the facts invoke fraud, deceit or dishonesty" (as in** *1234389 Alberta Ltd***) and I find Mr. Vrbanek is personally liable for the losses sustained by the Zerbins as noted above.** [paras 153-156 [emphasis added]

[143] And the ABCA's endorsement of those findings:

Although not strenuously argued at the appeal hearing, the appellants in their factum challenge the trial judge's decision to pierce the corporate veil and find both DN and Mr Vrbanek jointly and severally liable for damages. Courts will

> pierce the corporate veil only when a corporation has been "completely dominated and controlled and used as a shield for fraudulent or improper conduct": *Elbow River Marketing Limited Partnership v Canada Clean Fuels Inc*, 2012 ABCA 328 at para 16. **The trial judge found that Mr Vrbanek was the controlling mind of DN and that he had engaged in deception and dishonesty in dealing with the Zerbins.** Those findings, amply supported on the record, are entitled to deference. The trial judge did not err in piercing the corporate veil in these circumstances.
>
> While the trial judge did not err in this regard, we are of the view that it was **unnecessary for him to even proceed to this next step and consider whether to pierce the corporate veil. The factual overlap between the fraud finding and the conclusion to pierce the corporate veil rendered this secondary analysis largely redundant. The finding of fraud would attract liability to Mr Vrbanek in any event.** The record before us obviates the need to determine whether these are indeed distinct paths to personal liability. [paras 18 and 19] [emphasis added]

[144] Applying those principles here, and starting with Compeer's argument as to Mr. Price's liability, Compeer emphasized the cross-examination of him reviewed above (paras 92 and 93), as well as other cross-examination excerpts (collectively captured in footnotes 31 and 47-49 of Compeer's brief, with footnote 48 including an excerpt from one of Mr. Price's affidavits), which Compeer characterized as follows:

> Ray Price, as the senior-most executive officer within the US and Canadian Sunterra Entities, admits he authorized and directed the fraud.
>
> All of the [cheque kiting fraud] was done at the direction of Ray Price for the acknowledged purpose of avoiding overdrafts. Ray Price himself concedes that he was aware that the kiting activities Sunterra was carrying out would create "conditional credit" (the phrase he used to describe the concept of the float) and conceded he was aware that this could be happening in the NBC and Compeer accounts simultaneously (which means he was aware that there were not actual funds in the accounts collectively). In this way, overdrafts in the accounts were notionally avoided – not because Sunterra actually had the funds—but through the creation of "floats" from the deposit of the cheques which created the illusion of positive cash balances. [footnotes omitted]

[145] I acknowledge that Mr. Price did not expressly admit to authorizing and directing fraud.

[146] However, for the reasons outlined above (paras 93 and 94), as bolstered by the noted additional cross-examination excerpts (centrally reflecting Mr. Price's awareness that (among other things) the end-stage cheques heading south were not or would not have been anchored by sufficient funds for payment i.e. that "coverage" was only "provided" by the volleying back and forth of conditional credit), I accept Compeer's position that Mr. Price was the chief architect of the account management practice, he ensured that that it was put into, and kept, in practice until the very end, and he was ultimately responsible for (returning the central focus in these proceedings) the issuance of the approximately $59,000,000 cheques from the north, on which Compeer advanced or otherwise gave credit to the US Sunterra Entities, which cheques were not

backed by sufficient funds for payment and which ultimately left Compeer with the earlier-noted shortfall of approximately $35 million USD.

[147] Given his role as president and a director of the Canadian Sunterra entities, he is fairly characterized as the or at least a critical segment of the "directing mind" of those entities and, as a director, as having a statutory "act in best interests of the corporation" responsibility.

[148] Matching the responsibility for the cheque kiting and its outcome with that central role, and applying the approach in ***Vrbanek*** and ***1234389***, I find that Mr. Price is personally liable for Compeer's losses i.e. along with the Canadian Sunterra Entities.

[149] As for Ms. Uffelman and Mr. Thompson, neither was a director. Neither was the prime mover or a critical contributor to the conception of the account management practice or the corporate decisions to launch it and continue it.

[150] Rather, they were "implementers."

[151] The evidence showed that various lower-level Sunterra employees assisted Mr. Thompson in the on-the-ground operation of the account management practice.

[152] Compeer did not argue that those employees too should be held personally liable for their losses. Or provide any cases or, in any case, any rationale for where to draw the line between directors and "directing minds", on the one hand, and lower-level employees, on the other.

[153] In these circumstances, I decline to impose personal liability on either Ms. Uffelman or Mr. Thompson.

[154] Having said that, I accept Compeer's arguments (and the associated evidence highlighted by them) as to Ms. Uffelman's and Mr. Thompson's awareness of the state of the Canadian and US bank accounts from time to time and, in particular, at the end stages here (in particular as reflected in the "living chart" maintained by Mr. Thompson showing the anticipated overdrafts and shortfalls from time to time i.e. absent "coverage" via conditional-credit cheques) i.e. their knowledge of the true shortfalls and overdrafts from time to time and, in particular, at the end stages, and I attribute their knowledge of those matters to Sunterra Canada and to Mr. Price i.e. as the ultimate proponent of the account management practice and the apex executive directing the ongoing "coverage" of account shortfalls and overdrafts by the conditional-credit cheques.

G. "Inconsistent pleadings / contradictory claims in statement of claim"

[155] Sunterra Canada raises various arguments under this banner.

[156] First, it points to Compeer alleging at places in its statement of claim that cheque kiting was perpetrated by the US Sunterra entities and the Canadian Sunterra entities and implemented "on the ground" by Mr. Price, Ms. Uffelman, and Mr. Thompson. And then at other places omits reference to the US Sunterra entities. It elaborated:

> … the activities alleged to constitute the "cheque kiting scheme", which is the basis of [Compeer's] civil fraud claims, were, on the facts pleaded by Compeer, carried out by and between the US Sunterra Entities and the Canadian Sunterra Entities. However, **Compeer has failed to join the US Sunterra Entities as Defendants** to its claims and presumably would face challenges in doing so given that the **US Sunterra Entities have not submitted to this jurisdiction**. In the absence of the US Sunterra Entities as Defendants, any findings by the court in

> favour of the allegations would render the subject matter of the claims as ***res judicata*** **and the US Sunterra Entities would thereby be bound by those findings** without having an opportunity to defend as against the claims.
>
> … [Compeer] has **abused the processes of this Court** to inappropriately bring this claim in an effort to recover from the Canadian Sunterra Entities, Ray Price, [Debbie] Uffelman, and [Craig] Thompson in circumstances where it has **not joined the US Sunterra Entities** as Defendants, being companies which are on Compeer's own pleadings, **essential and required parties to the alleged "cheque kiting scheme."** …
>
> … [Compeer] [has] included the US Sunterra entities in the facts alleged because, *ipso facto,* **there can be no "cheque kiting scheme" as alleged without the involvement, for one half of the ledger, so to speak, of the US Sunterra Entities.** On the other hand, Compeer wishes **to avoid the *res judicata* argument** above, by later alleging that the fraud has been perpetuated by the individual Defendants together with the Canadian Sunterra Entities, **without any mention of the US Sunterra Entities.** [emphasis added]

[157] I disagree:

- it is undisputed that the companies on both sides of the border were under common control;
- it was not inappropriate for Compeer to include evidence of the south companies' activities i.e. as part of explaining the back-and-forth movement of the cheques, without adding those companies as defendants. The reason is that Compeer's principal focus was the activities of the north companies, as it was their cheques (to Compeer for application to the south companies' credit) on which Compeer advanced credit and, when NBC declared those cheques NSF, which caused Compeer's losses. Seeking no relief against the south companies here, Compeer did not have to include them as defendants; and
- incidentally, I do not understand how those companies, as non-parties here, could be bound by any findings made against them i.e. how *res judicata* could operate against them as non-parties: see ***Bronson v Tompkings Ranching Ltd***, 2013 BCCA 477.

H. Summary-judgment process

[158] Given my findings above on the applicable law and the relevant facts (the latter of which I was able to reach without making any credibility assessments), and given what I find was a comprehensive record, reflecting all available material evidence, there is no compelling reason for a full trial of these matters or any other process i.e. other than that approved in the claims procedure orders directed in summer 2025 for both the Compeer and NBC claims.

[159] I will return to this topic in the conclusion below.

I. Mitigation

[160] Sunterra argues that Compeer failed to mitigate its asserted losses.

[161] Most of its arguments relate to perceived-to-be-shortsighted or otherwise wrongheaded decisions by Compeer in the US receivership proceedings.

[162] I find that those arguments are effectively collateral attacks on the US receivership order and orders made in those proceedings.

[163] Sunterra's recourse for these complaints is (or would have been i.e. if too late now) to appeal the receivership order or any of the orders made in those proceedings.

[164] It is not this Court's role to weigh in on the soundness of any step taken in the US proceedings.

[165] As for the balance of its mitigation arguments, they go to Compeer's asserted failure to accept one or more Sunterra proposals for resolving Compeer's shortfall (even if Sunterra does not concede that it reaches the approximately $35 million USD discussed above).

[166] Given the massive shortfalls to Compeer and the cheque-kiting i.e. fraud-featuring circumstances giving rise to them, Compeer had no obligation to enter into any kind of repayment plan with Sunterra i.e. it was entitled to initiate and pursue the US receivership proceedings and to pursue its claim (under review here) in the Canadian *CCAA* proceedings.

[167] In any case, to the extent Sunterra's focus here is the proposal addressed in paragraph 78 of Compeer's brief (i.e. with pay-out (possibly) in eight years), the US court has already pronounced it "speculative", lacking "concrete evidence [with which to evaluate it]", and as "requir[ing] Compeer to fund [it] indefinitely" and according as "inappropriate" in all the circumstances.

[168] Sunterra did not offer any further defence of that proposal here.

[169] In any case, it is not possible at this stage to gauge whether that proposal or any of Sunterra's proposals would have resulted in greater or earlier net recoveries, or both i.e. compared to what Compeer will eventually recover out of the US receivership proceedings, any other US recovery proceedings, these *CCAA* proceedings, and any other Canadian proceedings.

[170] Accordingly, I decline to make any reduction in Compeer's claim for failure-to-mitigate reasons.

J. Declarations under *CCAA*

[171] Compeer first seeks a declaration under para 19(2)(d) *CCAA*, which states:

> 19(2) A compromise or arrangement in respect of a debtor company may not deal with any claim that relates to any of the following debts or liabilities unless the compromise or arrangement explicitly provides for the claim's compromise and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:
>
> …
>
> a) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation ….

[172] Sunterra argues that the conditions of paragraph (d) are not satisfied here and, in any case, in advance of the filing of a plan of arrangement and even the determination of Sunterra's

assets and liabilities, granting the declaration would be premature and "would undermine the purposes of the *CCAA*."

[173] Sunterra did not explain how such undermining would result.

[174] I find that Compeer's claim arising from the cheque-kiting fraud here falls squarely within paragraph (d) and that granting the requested declaration will provide certainty and clarity for the parties as the *CCAA* proceeding advances i.e. with all knowing that Compeer's claim qualifies as a non-compromisable claim (i.e. without its assent).

[175] Accordingly, I grant the declaration in the form outlined in para 83(a) of Compeer's brief, albeit with the addition of these closing words "… unless Compeer votes for the acceptance of any such compromise or arrangement."

[176] Compeer also seeks a declaration under subsection 5.1(2) *CCAA*, which states:

> A provision for the compromise of claims against directors [under ss 5.1(1) i.e. " … claims … that arose before the commence of the proceedings under this *Act* and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations"] may not include claims that
>
> …
>
> b) … are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

[177] Sunterra resists here too.

[178] I accept its first position, namely, that this provision does not apply to either Ms. Uffelman or Mr. Thompson i.e. as non-directors.

[179] I reject its remaining positions, namely, that no declaration is warranted in respect of Mr. Price.

[180] Instead, I grant the declaration in the form outlined in para 83(b) of Compeer's brief, factoring out Ms. Uffelman and Mr. Thompson and also narrowing the declaration to the "allegations of misrepresentations" branch i.e. factoring out the "wrongful and oppressive conduct of directors" branch, on which I make no decision, leaving it to further submissions from both sides (with which I shall be seized) i.e. if Compeer believes it is necessary to have a declaration under the second branch as well.

[181] As for Sunterra's argument that Compeer is not "creditor" of the Canadian Sunterra entities, they now are i.e. as a result of this judgment and effectively have been since the crystallization of its cheque-kiting-result claim in mid-February 2025 (if not before that i.e. from time to time during the operation of the cheque-kiting scheme i.e. as the net balances on both sides of the border stood from time to time).

[182] I do not rule on the overall breadth of s. 5.1(1) e.g. on whether it is limited to "directors' liability" claims imposed at law e.g. for unremitted source deductions under the *Income Tax Act*.

[183] Finally, I see no reason to grant a further declaration sought by Compeer, namely, preserving its claims (if any) against Arthur Price, David Price, or Glen Price.

[184] Compeer did not provide particulars of what those claims are or might be, and those individuals did not play a role in the current application.

K. Guarantee claim

[185] Compeer also seeks judgment against Sunterra Enterprises Inc. Per Compeer:

> [That Sunterra entity] failed to honour contractual guarantees provided as part of Sunterra's lending relationship with Compeer. There is no dispute that the guarantee was called on the amount of $29,132,187.91 USD [reflecting a ceiling in some of the underlying guarantees i.e. with this being a subset of Compeer's overall claims against Sunterra collectively] and has gone unsatisfied and so Compeer seeks summary judgment on its guarantee for this amount, plus interest and costs.

[186] It elaborated:

> Following discovery of the fraud, Compeer demanded payment from the Guarantor to satisfy the liabilities incurred by the US Sunterra Entities and Lariagra [Farms Ltd]. These liabilities arose as a consequence of the fraud associated with the credit that had been extended by Compeer. The guarantees are unambiguous and the Guarantor should be held to its obligations. No evidence has been tendered in response to Compeer's claim against the Guarantor. There is no genuine issue requiring a trial and no defence[;] the Guarantees are valid and enforceable.

[187] Sunterra counters, saying that Compeer breached a duty of good faith to the US Sunterra Entities and, by extension, to Sunterra Enterprises Inc as guarantor, via:

- its actions in suddenly and without notice changing the course of conduct between the US Sunterra Entities and Compeer, a course of conduct which Compeer had knowingly let transpire since 2022;
- by its conduct causing harm to the business of the US Sunterra Entities following the account freeze;
- by its conduct in proceeding to a receivership application without notice and while leading the US Sunterra Entities to believe that they were negotiating in good faith for an outcome that would maximize the interests of all stakeholders and yield a much higher dollar value result for Compeer, when they had no such intention; and
- in refusing to engage and accept a course of conduct that would enable [an] outcome that would maximize the interests of all stakeholders and yield a much higher dollar value result for Compeer.

  As a result of Compeer breaching its duty of good faith as above, the outstanding debts of the US Sunterra Entities to compeer, being the primary liabilities, are estimated to be at least USD $15 million higher than they would have been, and any liability of Sunterra Enterprises to Compeer under the guarantee must be reduced accordingly

[188] Sunterra's first argument might have had traction if the evidence had shown that it had alerted Compeer to the NSF-character of the end-stage north-emanating cheques on which Compeer advanced approximately $59 million USD or if the evidence overall had shown that Compeer made those advances with actual knowledge of that character or even if that Compeer should have known that.

[189] But the evidence went the other way, with the breach here on the other foot i.e. existing in the cheque-kiting scheme pursued by Sunterra.

[190] The other arguments repeat the mitigation arguments rejected above.

[191] In these circumstances, I see no basis for declining to award Compeer judgment against Sunterra Enterprises Inc. in the requested amount (ensuring that Sunterra's position (its brief, para 277) that "in respect of the indebtedness of Lariagra US, the guarantee given is limited to USD $3 million", on which point Compeer apparently offered no counter submissions).

L. Conclusion

[192] I return to the summary-judgment analysis. In the circumstances here, and for the reasons outlined above, Compeer is entitled to a summary judgment as against Sunterra Farms Ltd, Sunwold Farms Limited, and Ray Price in the amount of $35,330,968.94, plus interest in accordance with the *Judgment Interest Act*.

[193] That figure comes from para 85(a) of Compeer's brief. Sunterra did not offer a counter position on the request for judgment in that amount i.e. as an alternative "calculation" position if its substantive arguments (e.g. on the nature of the chequing activities, mitigation, etc.) were not accepted.

[194] Shortly before the December 4 and 5, 2025 application at which these issues were argued, I declined leave to Compeer to provide an affidavit updating the calculation of its overall claim against the Canadian Sunterra entities, noting that such was not contemplated under the claims procedure order and the tight timing.

[195] For the purpose of ensuring that the judgment to Compeer is accurate and comprehensive, I am revisiting that decision and now grant leave to Compeer to submit that affidavit or any substitute affidavit providing an update of its judgment calculations, with Sunterra having one week from the submission of whichever affidavit (if any) Compeer provides i.e. to provide its position on the calculations.

[196] Summary judgment on the guarantee and the granting of the declarations has been addressed above.

M. Costs

[197] Compeer asked for costs on a solicitor and client basis.

[198] Sunterra asked for costs against Compeer.

[199] Given the fraudulent misrepresentations are the heart of this proceeding and the resulting massive losses to Compeer, I cannot conceive of any reasonable rationale for denying Compeer solicitor-client costs here.

[200] I award costs to Compeer on that basis i.e. its reasonable solicitor-client costs of the application, with any dispute on the reasonableness of the fees claimed to be heard and decided by an assessment officer.

N. Closing note

[201] My decision in the related application concerning National Bank and Sunterra will be released shortly.

[202] I thank all counsel for their helpful written and oral submissions.

Heard on December 4-5, 2025.
Dated at Calgary, Alberta January 27, 2026.

Michael J. Lema
J.C.K.B.A.

Appearances:

Applicants:
Lincoln Caylor, Keely Cameron, Mathieu LaFleche and Egan Hamill
Bennett Jones
for Compeer Financial PCA

Scott Chimuk and Charlotte Pittman
Blue Rock Law
for Sunterra Food Corporation, Trochu Meat Processors Ltd., Sunterra Quality Food Markets Inc., Sunterra Farms Ltd., Sunwold Farms Limited, Sunterra Beef Ltd., Lariagra Farms Ltd., Sunterra Farm Enterprises Inc., Sunterra Enterprises Inc., Ray Price, Debbie Uffelman and Craig Thompson